IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 18713 of 2007(C)

PETITIONER:

M/S. SUPERFLAMES, 16/457,
D'SOUZA COMPLEX, KAZHUTHUMUTTU, KOCHI-5,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.S.VINOD BHAT

RESPONDENTS:

---

1. THE SALES TAX OFFICER,
2ND CIRCLE, MATTANCHERRY.

2. THE DEPUTY COMMISSIONER(APPEALS),
ERNAKULAM.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT,
MATTANCHERY, KOCHI-2.

BY ADV. SHRI.MOHAMMED RAFIQ, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 18713 of 2007

Dated, this the 21st day of June, 2007

J U D G M E N T

Dispute in the appeal pertains to rate of tax and interest thereon. The petitioner appears to have omitted to note the amendment increasing the rate of tax on LPG. In the circumstances, there is no prima-facie case for stay against recovery proceedings for recovery of balance tax due under assessment. However, petitioner is granted three bimonthly instalments to clear the balance tax with interest payable under Sec. 23(3) of the KGST Act for the belated payment after raising of demand after assessment. First instalment will be paid on or before 20/08/2007 and balance on or before 20th of October and December 2007.

2. So far as interest demanded for periods prior to assessment is concerned, it is seen that Officer has levied interest under Sec. 23(3) of the KGST Act. Interest liability, if any, should have been considered only under Sec. 23(3A) of the KGST Act. This mistake can be corrected in rectification proceedings. The Officer is directed to consider correctness of assessment order afresh and rectify mistake if any in the order, after hearing

petitioner. There will be a direction to the appellate authority to withhold disposal of appeal until the assessing officer considers the matter. Thereafter he will take up and dispose of the appeal with reference to modified order if issued by assessing officer after permitting petitioner to raise additional grounds. Recovery of interest for period prior to assessment will remain stayed till orders are issued by the appellate authority. Appellate authority is directed to consider appeal and dispose of the same in three months from date of issue of order by assessing officer as above.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg